THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 26737 of 2005

Oral order:

Assailing the action of respondent Nos. 1 and 2 in not implementing the orders issued by respondent No.3 in proceedings No. GMTD-NZB/Corr/PT/2001-02/49, dated 27.11.2001, and the consequential orders issued by him in proceedings No. GMTD-NZB/Corr/PT/2001-02, dated 06.06.2002, converting the services of the petitioner into full time casual labourer w.e.f. 01.11.2001, as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India, the present writ petition is filed.

The petitioner is a part time casual labourer with less than four hours duty. While working as such, the Government of India through its Department of Telecom, as a one-time relaxation, issued orders dated 25.08.2000, for conversion of part time casual labourers with less than four hours of duty, who have worked for 240 days in the preceding twelve months into full time casual labourers. In the light of the said orders, respondent No. 3 issued proceedings dated 27.11.2001, converting 33 part time casual mazdoors working in various exchanges into full time casual mazdoors with eight hours duty per day w.e.f. 01.11.2001. The name of the petitioner finds place at Sl. No. 12 in the said proceedings. Respondent No.3 again issued proceedings dated 06.06.2002 conveying the approval of the General Manager for conversion of the part time casual mazdoors mentioned therein into full time casual mazdoors with eight hours duty per day w.e.f. 01.11.2001. In the said orders, the name of the petitioner finds place at Sl. No.4. Now, it is the grievance of the petitioner that despite

the above orders of respondent No.3 converting him into full time casual mazdoor with eight hours duty per day, respondent Nos. 1 and 2 have not converted him into full time casual mazdoor. Hence, he seeks a direction to respondent Nos. 1 and 2 to implement the orders issued by respondent No.3 converting him into full time casual mazdoor with eight hours duty per day.

Respondents filed counter taking a stand that the orders issued by respondent No.3 are not in accordance with the scheme framed by the Government of India for conversion. It is stated that respondent No.3 issued orders dated 06.06.2002 for conversion of part time casual mazdoors into full time mazdoors in respect of 44 candidates. While so, the Circle Office vide orders dated 14.08.2002 issued instructions to keep the said orders in abeyance until further orders. Thereafter, a team of officers from the Circle Office visited Nizamabad SSA in August 2002 to inquire into the matter. On the basis of the information furnished by the Circle Office, the team of officers found only 14 part time casual mazdoors were eligible to be converted into full time casual mazdoors as they worked for 240 days. Upon further verification, out of the 14 part time casual mazdoors, only ten casual mazdoors fulfilled the requirements. Accordingly, orders dated 16.12.2003, were issued converting the said eligible 10 part time casual mazdoors into full time casual mazdoors. They thus submitted that the petitioner cannot seek implementation of erroneous orders, and prayed for dismissal of the writ petition.

Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondents-BSNL.

Though respondent No.3 in the counter has taken a stand that the order of conversion dated 06.06.2002 is not correct, the fact remains, the said order was neither cancelled nor withdrawn. As the

petitioner is seeking implementation of the said orders, this Court by order dated 05.10.1007 directed the personal appearance of respondent Nos. 3 and 4 along with the relevant records. Accordingly, they appeared in person along with the record.

Though the learned Standing Counsel for the respondents submits that the petitioner did not work as part time casual labourer for 240 days before the cut off date i.e. 01.08.1998, and therefore, he is not eligible for conversion into full time casual labourer, the fact remains, by proceedings dated 23.11.1998, the Divisional Engineer, Telecom, Nizamabad, enhanced the working hours of the petitioner by more than four hours w.e.f. 01.11.1998. Apart from this, the Sub-Divisional Engineer (Groups) Morthad, has also issued certificate dated 19.10.2001, certifying that the petitioner had been working as on the said date in their unit, and that he had completed 240 days in a year prior to 01.08.1998. Since the proceedings dated 23.11.1998, issued by the Divisional Engineer, Telecom, Nizamabad, showed that the working hours of the petitioner were enhanced to more than four hours, and having regard to the certificate dated 19.10.2001, issued by the Sub-Divisional Engineer, Morthad, which showed that the petitioner had completed 240 days in a year prior to 01.08.1998, it cannot be said that the petitioner had not worked for 240 days prior to 01.08.1998. In fact, respondent Nos. 2 and 3, in the light of the scheme framed by the Department of Telecom Services, New Delhi, for regularisation of casual labourers, vide 29.09.2000, had issued orders dated 27.11.2001 and 06.06.2002, converting the petitioner along with others, into full time casual labourers with eight hours duty per day w.e.f. 01.11.2001.

It is the contention of the respondents that grant of temporary status and regularization of casual labour has to be done in

accordance with Casual Labour (Grant of Temporary Status and Regularization), 1989. The said scheme is applicable only to those casual labourers who were engaged before 30.03.1985 and employed as on 01.10.1989 and who have rendered continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five day week), and since the petitioner was not engaged as on 30.03.1985, he is not eligible for conferment of temporary status and regularization. This contention of the respondents cannot be accepted, for respondent Nos. 2 and 3 issued orders dated 27.11.2001 and 06.06.2002 converting the petitioner and others into full time casual mazdoors with eight hours duty per day w.e.f. 01.11.2001 in the light of the orders dated 29.09.2000, issued by the Department of Telecom Services, New Delhi, for regularization of casual labourers. As per the orders dated 29.09.2000 of the Department of Telecom Services, New Delhi, decision to regularize all the casual labourers working in the Department, including those who have been granted temporary status, w.e.f. 01.10.2000, was taken, and the services were to be regularized in the following order:

(1) All casual labourers who have been granted temporary status upto issuance of orders No.269-4/93-STN-II, dated 12.02.1999, circulated vide letter No. 269-13/99-STN-II, dated 12.02.99 and further vide letter No. 269-13/99-STN-II, dted 09.06.2000.
(2) All full time casual labourers as indicated in the Annexure.
(3) All part time casual labourers who were working for four or more hours per day and converted into full time casual labourers vide letter No. 269-13/99-STN-II, dated 16.09.1999.
(4) All part time casual labourers who were working for less than four hours per day and were converted into full time casual labourers vide letter No.269-13/99-STN-II, dated 25.08.2000.
(5) All ayas and Supervisors converted into full time casual labourers as per order No. 269-10/97-STN-II, dated 29.9.2000.

In the said order, reference was made to letter No. 269-4/09-STN-II, dated 12.02.1999, whereunder temporary status was granted to causal labourers eligible as on 01.08.1998, and was made clear that

no casual labourers were to be engaged after that date, that and all casual labourers not eligible for temporary status as on 01.08.1998, were to be disengaged forthwith. From this, it is clear that the cut off date fixed for regularization is 01.08.1998, and since the orders dated 23.11.1998, issued by the Divisional Engineer, Telecom, Nizamabad, shows that the petitioner was working with them and that his working hours were enhanced for more than four hours w.e.f. 01.11.1998, he cannot be said to have not in the employment of the respondents as casual labour, and more so when the orders issued in the letter dated 12.02.1999 make it clear that no casual labour shall be engaged after 01.08.1998 and not eligible for grant of temporary status, are to be disengaged.

The respondents except stating that casual labour engaged before 30.03.1985 alone are entitled to grant of temporary status, have not placed any material to justify such a stand. According to the petitioner, he joined the services of the respondent on 01.01.1998. As stated above, respondent Nos. 2 and 3 issued orders 27.11.2001 and 06.06.2002 converting the petitioner and others into full time casual mazdoors with eight hours duty per day w.e.f. 01.11.2001 in terms of the orders dated 29.09.2000 issued by the Department of Telecom Services, New Delhi, and not in terms of the scheme called Casual Labour (Grant of Temporary Status and Regularization), 1989.

Though the respondents contend that the petitioner could not have been appointed because of ban orders dated 30.03.1985 and 22.06.1998, the fact remains, it is the case of the petitioner that he was appointed as casual labour on 01.01.1998, and though the orders dated 19.04.2001, issued by the BSNL, New Delhi, made it clear that action must be taken against officers responsible for engaging causal labour in defiance of the said orders, the respondents have not

produced any material to show that they have taken action against the officers who have appointed the petitioner despite existence of ban orders on 01.01.1998

Be that as it may, the orders dated 27.11.2001 and 06.06.2002, issued by respondent Nos. 2 and 3, which the petitioner is seeking implementation of by respondent Nos. 1 and 2, have neither been withdrawn nor cancelled. Inasmuch as the respondents have miserably failed to prove that the orders which the petitioners are seeking implementation of are illegal orders, and they having neither been withdrawn nor cancelled, the petitioner cannot be said to be not justified in seeking their implementation.

For the foregoing, the writ petition has to be allowed, and it is accordingly allowed. Consequently, respondent Nos. 1 and 2 are directed to implement the orders dated 27.11.2001 and 06.06.2002, issued by respondent Nos. 2 and 3, converting the petitioner from part time casual labourer into full time casual labourer with eight hours duty forthwith. No costs.

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N.V. RAMANA, J.

Dated: 2nd November, 2007.
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